

§ 90.151 Requests for waiver.

(a) Requests for waiver of the rules in this part shall state the nature of the waiver or exception desired, and set forth reasons in support thereof including a showing that unique circumstances are involved and that there is no reasonable alternative solution within existing rules. When related to a specific application the submission and filing procedures of § 90.127 also apply.

(b) Applications may be dismissed if the accompanying petition for waiver of the rules does not set forth reasons which, sufficient if true, would justify a waiver or exception.

(c) Applicants requiring expeditious processing of their request for waiver, shall, pursuant to § 1.931 of this chapter, clearly caption both their request for waiver and the envelope containing it with the words "WAIVER—TIMELY ACTION REQUESTED."

(d) Requests for waiver of the rules not related to a specific application shall be submitted to the Federal Communications Commission, Gettysburg, PA 17326. (Waiver requests associated with and attached to specific applications that require a fee as set forth at part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of the rules. See also § 0.482 of the rules.)

(Sec. 4(i), Communications Act of 1934, as amended, 47 U.S.C. 154(i), and the authority delegated to the Managing Director by § 0.231 of the Commission's Rules, 47 CFR 0.231)

[49 FR 20292, May 14, 1984, as amended at 51 FR 14997, Apr. 22, 1986; 52 FR 10232, Mar. 11, 1987]

§ 90.153 Transfer or assignment of station authorization.

A station authorization and the rights it grants shall not be transferred, assigned, or in any manner disposed of to any person, unless the Commission shall, after obtaining full information, decide that the transfer, assignment, or disposal is in the public interest, convenience or necessity and give its consent in writing. An applicant for voluntary transfer of control or assignment under this section where the subject license was acquired by the transferor or assignor through a system of random selection shall, together with its application for transfer of con-

trol or assignment, file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (e.g., management or consulting contracts either with or without an option to purchase; below-market financing). The assignee is responsible for ascertaining that the station facilities are and will remain in compliance with the terms and conditions of the authorization to be assigned.

(a) *Application required.* The assignor or transferor of a commercial mobile radio license under this part must file an application for approval of assignment or transfer of control (Commission Form 490). In the case of involuntary assignment, such application must be filed no later than thirty (30) days after the event causing the assignment. The assignee or transferee must file a report qualifying it as a commercial mobile radio provider (Commission Form 430) unless a current report is already on file with the Commission.

(1) *Forbearance from pro forma assignments and transfers of control.* Licensees that are telecommunications carriers as defined in 47 U.S.C. 153 are subject to streamlined procedures for *pro forma*, i.e., non-substantial, transfers and assignments.

(2) A *pro forma* assignee or transferee is not required to seek prior FCC approval for the transaction, but must notify the FCC no later than 30 days after the event causing the assignment or transfer, either by filing an FCC Form 490 or in letter form. If a letter is submitted, it must contain a certification that the transfer or assignment is non-substantial and, together with all previous non-substantial transactions, does not involve a change in the licensee's ultimate control. A single letter may be filed for a transfer or assignment of control of more than one authorization if each authorization affected is identified by call sign in the

letter. Licensees must concurrently update ownership information on their FCC Form 430, if necessary.

(b) *Notification of completion.* Assignments and transfers of control of commercial mobile radio licenses must be completed within sixty (60) days of Commission approval, except those licensees subject to the streamlined procedures of paragraph (a)(1) of this section. The assignee or transferee must notify the Commission by letter of the date of completion of the assignment or transfer of control. If an assignment or transfer of control is not completed within this time, the assignor or transferor must so notify the Commission by letter, and the assignee or transferee must submit the authorization(s) to the Commission for cancellation or request an extension of time to complete the assignment or transfer of control. If the assignment or transfer of control is not completed, the authorization(s) remain with the assignor or transferor.

(c) *Partial assignment of authorization.* If the authorization for some, but not all, of the facilities of a commercial mobile radio station is assigned to another party, voluntarily or involuntarily, such action is a partial assignment of authorization.

(1) To request Commission approval of a partial assignment of authorization, the following must be filed in addition to the forms required by paragraph (a) of this section:

(i) The assignor must notify the Commission (Commission Form 600) of the facilities to be deleted from its authorization upon completion of the assignment.

(ii) The assignee must apply for authority (Commission Form 600) to operate a new station including the facilities for which authorization is assigned, or to modify the assignee's existing station to include the facilities for which authorization was assigned.

(2) Partial assignments must be completed within sixty (60) days of Commission approval. If an approved partial assignment is not completed within this time, the assignor must notify the Commission (Commission Form 600), and the assignee must submit the authorization(s) to the Commission for

cancellation or request an extension of time to complete the assignment. If the assignment is not completed, the authorization(s) remain with the assignor.

(d) *Limitations.* The Commission may deny applications for assignment of authorization or consent to transfer of control of a commercial mobile radio license if:

(1) The Commission is unable to make the public interest determinations required under the Communications Act with respect to both parties to the assignment or transfer; or

(2) The authorization was obtained for the principal purpose of speculation or profitable resale, rather than provision of commercial mobile radio services to the public.

[43 FR 54791, Nov. 22, 1978, as amended at 59 FR 9101, Feb. 25, 1994; 59 FR 59958, Nov. 21, 1994; 63 FR 10345, Mar. 3, 1998]

§ 90.155 Time in which station must be placed in operation.

(a) All stations authorized under this part, except as provided in paragraphs (b) and (d) of this section and in §§ 90.629, 90.631(f), 90.665, and 90.685, must be placed in operation within eight (8) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

(b) For local government entities only, a period longer than eight months for placing a station in operation may be authorized by the Commission on a case-by-case basis, where the applicant submits a specific schedule for the completion of each portion of the entire system, along with a showing that the system has been approved and funded for implementation in accordance with that schedule. See also §§ 90.631 and 90.633.

(c) For purposes of this section, a base station is not considered to be placed in operation unless at least one associated mobile station is also placed in operation. See also §§ 90.633(d) and 90.631(f).

(d) Multilateration LMS EA-licensees, authorized in accordance with